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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/843,102	04/24/2001	John D. DeTreville	MS1-718US	1064
22801	7590	12/12/2005	EXAMINER	
LEE & HAYES PLLC 421 W RIVERSIDE AVENUE SUITE 500 SPOKANE, WA 99201			HENNING, MATTHEW T	
			ART UNIT	PAPER NUMBER
			2131	

DATE MAILED: 12/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/843,102

Applicant(s)

DETREVILLE, JOHN D.

Examiner

Matthew T. Henning

Art Unit

2131

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 November 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): None.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.

Claim(s) objected to: None.

Claim(s) rejected: 1-17 and 20-52.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____

CEL
Primary Examiner
10/2/05
12/19/05

Continuation of 11. does NOT place the application in condition for allowance because: The information disclosure statement filed 11/21/2005 fails to comply with 37 CFR 1.97(d) because it lacks the fee set forth in 37 CFR 1.17(p). Furthermore, prosecution is closed and the IDS will be considered upon RCE. The IDS has been placed in the application file, but the information referred to therein has not been considered.

Regarding applicant's argument that the combination of van Zoest and Cooper would result in always rendering the content, the examiner does not find the argument persuasive. The applicant has mischaracterized the combination. The combination would not create an either/or situation as the applicant has stated, but instead would create a situation where both "tests" would need to pass in order to access the content. In this case, the system would compare the content to a database of known content to determine whether the user was in possession of the physical work (See van Zoest Col. 5 Paragraph 3). Then the system, as taught by Cooper, would compare the content with database of content currently being used by other users to determine whether the content was a duplicate. If the content was a duplicate, it would not be rendered, thereby protecting against the use of duplicate copies of the content as taught by Cooper (See Cooper Paragraph 0124). As such, the two comparisons are used together and produce a more secure result, and the system would play the content only if it was recognized content, and not content currently being played by another user. Therefore, the examiner does not find the argument persuasive.

Regarding applicant's argument that the license system of Fucarile would not be performed in addition to the comparison of van Zoest and therefore would be nonsensical to make the combination, the examiner does not find the argument persuasive. Once again, the applicant has mischaracterized the rejection. In this case, the system would compare the content to a database of known content to determine whether the user was in possession of the physical work (See van Zoest Col. 5 Paragraph 3). Then, as taught by Fucarile, because possession of the content should not necessarily grant authorization to use the content, the content license would be verified. If the content license was verified, the content could be used, otherwise not. This is a very simple idea and the combination makes sense because van Zoest determines possession of the content, and Fucarile determines how the possessed content may be used based on the license. As such, the combination makes sense, and contrary to the applicant's argument, the teachings of Fucarile would be performed in addition to the determination of possession of van Zoest. Therefore, the examiner does not find the argument persuasive.